

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1946/2003

(A)

This the 3rd day of March, 2004

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A.SINGH, MEMBER (A)

MES No.302744 K.L.Guptati BSO (Retd.)
R/o Pocket F, A-120,
Mayur Vihar, Phase II,
Delhi.

(Applicant in person)

Versus

1. Union of India
through Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.
2. Army Head Quarter,
Engineer-in-Chief Branch,
Kashmir House,
New Delhi-110001.
3. Chief Engineer,
Western Command, Chandi Mandir-134107.
4. Chief Engineer, Delhi Zone,
Delhi Cantt-110010.
5. Chief Engineer,
Bhatinda Zone,
Bhatinda Cantt.
6. Garrison Engineer,
Engineer Park,
Suratgarh Cantt-335804.

(By Advocate: Sh. Ravinder Sharma proxy for
Sh. R.P. Aggarwal)

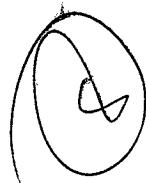
O R D E R

By Sh. Kuldip Singh, Member (J)

Applicant has filed this OA seeking a declaration to the effect that applicant had superannuated on 31.8.2002 and consequent to that respondents should be directed to pay to the applicant all the consequential and incidental benefits.

2. Applicant further claims that the arrears of pay and allowances w.e.f. 1.10.85 till 31.8.2002 with all

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consequential and incidental benefits. Besides that he has also claimed arrears of pension and interest @ 12%.

3. Facts in brief are that the applicant was working as Supervisor BSO Grade-I in the office of Chief Engineer in MES. Vide order dated 20.9.85 applicant was transferred to Suratgarh from Delhi. Said order of transfer was challenged by the applicant before Hon'ble Delhi High Court. However, the petition was transferred to this Tribunal on constitution of the Tribunal and the Tribunal vacated the interim stay against the transfer order on 29.7.86. According to the respondents applicant did not join duties, so a chargesheet was drawn against the applicant somewhere in October, 1986. The department made efforts to serve the applicant with the chargesheet. Since applicant could not be served through ordinary process so chargesheet was published in Daily newspapers and enquiry was commenced against the applicant. Applicant also participated in the enquiry some time from May 1987. Thereafter the enquiry officer submitted his report on the basis of which the disciplinary authority passed an order of removal from service against the applicant on 24.8.87.

4. Applicant filed an OA against the said order of removal which was registered as OA-214/88 but the OA was disposed with the observation that the holding of ex parte enquiry is not unjustified and Tribunal directed the appellate authority to dispose of the appeal as early as possible by passing a speaking order. Appellate authority was also directed to give due consideration to the observation made in the order and applicant was given liberty to approach the Court if aggrieved by the decision of the appellate authority. The appeal of the





applicant was rejected vide order dated 23.11.89 passed by appellate authority. Applicant again challenged the order by filing OA-2044/90. Said OA was disposed of by a Full Bench of this Tribunal and the Tribunal felt that the appellate authority had not seriously applied its mind to the quantum of punishment despite the direction given in the earlier OA-214/88 and the Court observed that the punishment awarded to the applicant is harsh particularly due to the reason that the applicant could not join the duties at Suratgarh because of the stay granted in his favour from the Hon'ble High Court. The fact that the applicant has alleged that he had gone to join duty on 4.8.86 and that also he had applied for seeking voluntary retirement.

5. So keeping in view all these contentions and the observations made by the Tribunal the appellate authority again considered the matter and had also given a personal hearing and had also taken into consideration the family circumstances of the applicant. The appellate authority, then modified the order of punishment into compulsory retirement. This order was passed on 16.12.94. Applicant again filed an OA-748/95 challenging the order of the appellate authority imposing the penalty of compulsory retirement. OA-748/95 was finally decided by order dated 4.1.99 and in the said OA applicant had also argued that the order of compulsory retirement should be made effective from 16.12.94 and not from the date of 14.9.87 when the original punishment order was passed. This contention of the applicant was rejected as Court was of the view that while disposing of the earlier OA of the applicant No.214/88 the Tribunal had directed the applicant to file an appeal which would be considered by



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appellate authority on merit who would decide the appeal within the time fixed by the Tribunal. There was no direction in the judgment about the quashing of the punishment order.

6. It is only by way of indulgence the Tribunal had allowed the applicant to prefer an appeal before the appellate authority. In Full Bench judgment also there was no direction of quashing the punishment order and it was only the appellate order which was quashed and the appellate authority was directed to consider the appeal afresh on the quantum of punishment. Thus, the contention of the applicant that he should be deemed to have been continued in service and to have been reverted back to post held by him prior to punishment order of 1987 was not accepted.

7. Applicant challenged the order passed in OA-748/95 in CW-794/99 before Hon'ble High Court. The said writ petition was also dismissed. In the present OA applicant submits that all these orders passed by the Tribunal and the Hon'ble High Court have been passed by ignoring the principles of law particularly a judgment of the Hon'ble Supreme Court in JT 1995 (4) SC 34 Radhabai vs. UT of Pondicherry wherein on the facts of that case Court had observed that appellant of the said case should be deemed to have been compulsorily retired on attaining the age of superannuation. Thus, it appears that applicant is basing its claim that he should be declared to be in service and should be declared to have been superannuated on 31.8.2002 on the basis of the said judgment. Thus, he claims arrears of pay and allowances also w.e.f. 31.10.85 to 31.8.2002 with consequential and incidental benefits.

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8. Respondents while contesting the OA submit that since the applicant was awarded the penalty of removal from service by the disciplinary authority vide order dated 14.9.87 and the said penalty order was never quashed or set aside but had been modified by the order of compulsory retirement by the appellate authority on 16.12.94 and the Tribunal having clearly rejected the prayer of the applicant that he should be treated in service till 16.12.94. So applicant should be deemed to have compulsory retired from the date of the initial order of removal of service. As regards pension is concerned, it is submitted that PPO has already been issued and copy of the PPO is placed on record vide Annexure R-3 and it is stated that the applicant is already drawing pension as per certificate issued by the PNB wherefrom the applicant is drawing a regular pension. thus, it is submitted that applicant is not entitled to be declared to have been superannuated in the year 2002 and he is not entitled to any pay and salary as claimed by him.

9. Applicant also filed a rejoinder and in the rejoinder applicant again pleaded that since the order of punishment had been set aside by this Tribunal so applicant should revert back in the service with all consequential benefits. Applicant has also annexed alongwith the rejoinder copy of a bill claiming a sum of Rs.4,07,268/- which reflects the period of 1.10.85 to 30.6.94 claiming salary, and the applicant was made to compulsory retired on 16.12.94.

10. Thus from the pleadings it emerges that the short question required to be determined in this case is whether the applicant is entitled to pension from the date the final order

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of compulsory retirement was passed or he is entitled to pension by counting period only up to the date of his initial order of removal from service.

11. Applicant has placed on record an order passed in OA-629/96 which was disposed of on 6.7.2000 wherein the applicant had challenged the provisional pension payment order issued on applicant on 27.11.85 and had claimed pension but the Court observed that the claim of the applicant for pension would be governed by the order to be passed in the High Court in Writ Petition No.794/99. Therefore, no direction are required to be issued in the OA whereby the applicant had challenged the interim PPO. The High Court in its Writ Petition No.794/99 was ceased to the matter pertaining to the question of order dated 16.12.94 vide which the appellate authority had modified the order of removal into that of punishment of compulsory retirement. The Writ Petition was filed against the order passed by the Tribunal in OA-748/95 wherein this order of 16.12.94 was challenged. High Court also dismissed the writ petition filed by the applicant and refuse to interfere in the order passed by the Tribunal wherein the order dated 16.2.94 vide which the applicant was made to compulsory retire and had been assailed.

12. The perusal of these orders go to show only that at no stage the order passed by the disciplinary authority removing the applicant from service had been set aside and quashed. Applicant could have claimed to continue in service till his superannuation had the order of removal of service being quashed by any of the judicial forums at any stage when originally the order of removal was challenged by the applicant before this Tribunal. The Tribunal had simply



directed the appellate authority to hear his appeal and in appeal again the order of removal was passed but when the same was challenged the matter was remanded back to the appellate authority to consider the quantum of punishment and the punishment was confirmed into compulsory retirement from that of removal. That also does not show that the applicant was ever treated to be having continued in service till 16.12.94 when the order of compulsory retirement was passed. Thus right from the day the order of removal was passed the applicant was not on the rolls of the respondents so he cannot be due to have continued in service till the age of superannuation.

13. Applicant in his OA itself clearly admits that he had carried the challenge to the order of compulsory retirement to the High Court and High Court has also dismissed the writ petition. Thus, we find that the order of removal has not been interfered at any stage by any of the judicial forums. It has also been observed that even there was no wrong when the department had proceeded ex parte against the applicant during the departmental enquiry. So by any stretch of imagination applicant cannot claim that he should be deemed to have continued in service till the age of superannuation. Thus, we find that OA is bereft of any merit and the same is liable to be dismissed. Accordingly, we dismiss the OA.


 (S.A. SINGH)
 Member (A)
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 (KULDIP SINGH)
 Member (J)